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10/716,586

11/19/2003

Gordon K. Dennis

HMC-130US

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11/17/2008

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EXAMINER

GALL, LLOYD A

ART UNIT

PAPER NUMBER

3673

MAIL DATE

DELIVERY MODE

11/17/2008

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|                              |                                      |  |  |
|------------------------------|--------------------------------------|--|--|
| <b>Office Action Summary</b> | <b>Application No.</b><br>10/716,586 | <b>Applicant(s)</b><br>DENNIS, GORDON K. |  |
|                              | <b>Examiner</b><br>Lloyd A. Gall     | <b>Art Unit</b><br>3673                  |  |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2008.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 14-16 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 and 14-16 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 6/21/04; 11/25/05; 8/4/08 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)          | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

The disclosure is objected to because of the following informalities: The amendment to the specification of August 14, 2007 using reference numeral 18 is objected to, since the drawings which incorporate reference numeral 18 are objected to, as set forth in the following paragraph.

Appropriate correction is required.

The drawings are objected to because the drawings filed on June 21, 2004, November 25, 2005 and August 4, 2008 are regarded as introducing new matter into the application. All new matter must be canceled. With respect to the drawings filed on June 21, 2004, for example in figure 3, the location of the hasp 20 and the angle of the slot 41 with respect to the shroud is regarded as new matter. See figures 4, 5A and 5B also. In figure 6, the key lock in the knob 45, the angle of the slot 41, and the structure which contacts the hasp 25 are regarded as new matter. With respect to the drawings filed on November 25, 2005, in figure 3, the location of the hasp 20 and the angle of the slot 41 with respect to the shroud is regarded as new matter. See figure 4 also. In figure 6, the angle of the slot 41 and the structure which contacts the hasp 25 are regarded as new matter. The drawings filed on August 4, 2008 are objected to as not complying with 37 CFR 1.121, since they must be labeled as "Replacement Sheet", if such is the case. All new matter which is not supported by the originally filed drawings must be canceled.

It is also noted that the large number of proposed drawing correction submissions is confusing the record. Applicant is required to submit a single drawing

Art Unit: 3673

set in any future amendment in response to this Office action. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

With respect to the following prior art rejections, claims 9 and 16 are regarded as positively claiming the access door. In response to applicant's remarks of August 4, 2008, on page 4, the top paragraph, independent claims 1 and 2 are regarded as not positively claiming the access door. The access door is only inferentially claimed in independent claims 1 and 2.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

Art Unit: 3673

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim 1 is rejected under 35 U.S.C. 102(b) as being anticipated by Plifka (827).

Plifka teaches a channel shaped protective shroud 28 to cover at least a portion of a locking device 36, the shroud having openings at both ends, means 10, 12 to affix the shroud in place over the locking device, and a single hasp 4 having a notch 26 to receive the locking device 36. The shroud 28 is appropriately sized to prevent the locking device (padlock) from disengaging from the notch 26 in the locking condition.

As set forth above, an access door is not being positively claimed.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plifka in view of Garvey et al and Hillabush.

Garvey teaches a shroud of approximately one quarter inch thick material as set forth in column 4, line 45. Hillabush teaches stainless steel used for shroud 100 and a hasp 200 (column 4, line 15). It would have been obvious to one of ordinary skill in the art to form the shroud of Plifka of one quarter inch stainless steel, in view of the teachings of Garvey and Hillabush, to provide corrosion resistance.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Plifka in view of Masoncup et al.

Art Unit: 3673

Plifka teaches the padlock shackle and at least a portion of the body of the padlock as being covered by the shroud as seen in fig. 3. Masoncup teaches a shackle 16 which may pivot about the leg 15. It would have been obvious to substitute a padlock with a pivoting shackle for the padlock of Plifka, in view of the teaching of Masoncup, since any well known type of padlock would function just as well in locking the hasp of Plifka. It is also noted that the locking device is not being positively claimed in claims 7 and 8.

Claim 1 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Plifka or Knaack et al.

Hoffman teaches a channel shaped protective shroud 54, 56, 58 to cover a locking device 50, the shroud having openings at both ends (column 5, line 41), weld means or any other suitable means (column 4, lines 21-22) to affix the shroud in place over the locking device, and a single hasp 30. Plifka teaches a hasp element notch 26 to engage the padlock within a shroud 28, as does Knaack teach a hasp notch 61 to engage a padlock within a shroud 35. It would have been obvious to substitute a notch for the opening 46 of Hoffman, and to appropriately size the shroud of Hoffman such that the padlock will not be disengaged from the notch in the locking condition, in view of the teaching of either Plifka or Knaack et al, to provide expected locking results. As set forth above, an access door is not being positively claimed.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Plifka or Knaack et al as applied to claim 1 above, and further in view of Garvey et al and Hillabush.

Art Unit: 3673

Garvey teaches a shroud of approximately one quarter inch thick material as set forth in column 4, line 45. Hillabush teaches stainless steel used for shroud 100 and a hasp 200 (column 4, line 15). It would have been obvious to one of ordinary skill in the art to form the shroud of Hoffman of one quarter inch stainless steel, in view of the teachings of Garvey and Hillabush, to provide corrosion resistance.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Plifka or Knaack et al as applied to claim 1 above, and further in view of Masoncup et al.

Masoncup teaches a shackle 16 which may pivot about the leg 15. It would have been obvious to substitute a padlock with a pivoting shackle for the padlock of Hoffman, in view of the teaching of Masoncup, since any well known type of padlock would function just as well in locking the hasp of Hoffman. It is also noted that the locking device is not being positively claimed in claims 7 and 8.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Garvey et al and either Plifka or Knaack et al.

Hoffman teaches a channel shaped protective shroud 54, 56, 58 to cover a locking device 50, the shroud having openings at both ends (column 5, line 41), weld means or any other suitable means (column 4, lines 21-22) to affix the shroud in place over the locking device, and a single hasp 30. Garvey teaches a plurality of anchors 66 and means 69 to affix the anchors 66. Plifka teaches a hasp element notch 26 to engage the padlock within a shroud 28, as does Knaack teach a hasp notch 61 to engage a padlock within a shroud 35. It would have been obvious to substitute anchors and nuts

Art Unit: 3673

for the weld of Hoffman, in view of the teaching of Garvey, since Hoffman teaches in column 4, lines 21-22 that any well known suitable means may be used in place of the weld. It would have been obvious to substitute a notch for the opening 46 of Hoffman, and to appropriately size the shroud of Hoffman such that the padlock will not be disengaged from the notch in the locking condition, in view of the teaching of either Plifka or Knaack et al, to provide expected locking results. As noted above, an access door is not being positively claimed.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Garvey et al and either Plifka or Knaack et al as applied to claim 2 above, and further in view of Oliver.

Oliver teaches screws 32 welded at 35 to a plate 22. It would have been obvious to weld the screws of Hoffman as modified by Garvey to the shroud, in view of the teaching of Oliver, to provide expected results.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of Garvey et al and either Plifka or Knaack et al as applied to claim 2 above, and further in view of Oliver and Braxter.

Oliver teaches screws 32 welded at 35 to a plate 22. Braxter teaches that epoxy is a well known substitute for a weld as set forth in column 4, line 49. It would have been obvious to attach the screws of Hoffman as modified by Garvey to the shroud with an epoxy, in view of the respective teachings of Oliver and Braxter, to provide expected results.



Claims 1, 9 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Garner and Plifka.

White teaches an access door 2, a hasp attached to the container 1 interior by the inner side of the rivet 6, an aperture 8 in the door to receive the hasp, and a lock 13 to receive the hasp when the door is closed. Garner teaches a shroud 10 on a door to cover a locking device 40, welding means (column 2, line 43) to affix the shroud in place, and a hasp element 30. Plifka teaches a channel shaped shroud with openings at its ends, as set forth above, and a notch 26 to engage the padlock shackle. It would have been obvious to provide a shroud on the door 2 of White to receive the hasp and padlock, in view of the teaching of Garner, to protect the padlock and its shackle from tampering/cutting tools. It would have been obvious to provide a channel shaped shroud with openings at its ends for the shroud of White as modified by Garner, and to substitute a notch for the padlock engaging opening 14 of White, in view of the teaching of Plifka, to provide expected locking results. With respect to claim 16, the sequence of steps are regarded as being inherent in the combination of the references.

Claims 3 and 4 are rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Garner and Plifka as applied to claim 1 above, and further in view of Garvey et al and Hillabush.

Garvey teaches a shroud of approximately one quarter inch thick material as set forth in column 4, line 45. Hillabush teaches stainless steel used for shroud 100 and a hasp 200 (column 4, line 15). It would have been obvious to one of ordinary skill in the art to

Art Unit: 3673

form the shroud of White as modified by Garner and Plifka of one quarter inch stainless steel, in view of the teachings of Garvey and Hillabush, to provide corrosion resistance.

Claims 7 and 8 are rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Garner and Plifka as applied to claim 1 above, and further in view of Masoncup et al.

Masoncup teaches a shackle 16 which may pivot about the leg 15. It would have been obvious to substitute a padlock with a pivoting shackle for the padlock of White, in view of the teaching of Masoncup, since any well known type of padlock would function just as well in locking the hasp of White.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Garner and Plifka as applied to claim 9 above, and further in view of Hillabush and Garvey et al.

Hillabush teaches a shroud 100 and a hasp 200 formed of stainless steel (column 4, line 15). Garvey teaches a shroud of quarter inch thick material, as set forth above. It would have been obvious to form the shroud and hasp of White as modified by Garner and Plifka of quarter inch stainless steel, in view of the respective teachings of Hillabush and Garvey, to provide corrosion resistance of the shroud and hasp.

Claim 12 is rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Garner and Plifka as applied to claim 9 above, and further in view of Masoncup et al.

Masoncup teaches a padlock with a pivoting shackle. It would have been obvious to substitute a padlock with a pivoting shackle for the padlock of White, in view of the

Art Unit: 3673

teaching of Masoncup, since any well known type of padlock would function just as well in engaging the hasp of White.

Claims 14 and 15 are rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Garner, Plifka and Masoncup et al as applied to claim 12 above, and further in view of Hoffman.

Hoffman teaches the entire padlock covered by the shroud as seen in figure 5. It would have been obvious to cover the entire padlock of White with its shroud as modified by Garner and Plifka, in view of the teaching of Hoffman, to protect the entire padlock from the elements and from cutting/tampering tools.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Garner, Plifka and Garvey et al.

White teaches an access door 2, a hasp attached to the container 1 interior by the inner side of the rivet 6, an aperture 8 in the door to receive the hasp, and a lock 13 to receive the hasp when the door is closed. Garner teaches a shroud 10 on a door to cover a locking device 40, welding means (column 2, line 43) to affix the shroud in place, and a hasp element 30. Plifka teaches a channel shaped shroud with openings at its ends, as set forth above, and a notch 26 to engage the padlock shackle. Garvey teaches a plurality of anchors 66 and means 69 to affix the anchors 66. It would have been obvious to provide a shroud on the door 2 of White to receive the hasp and padlock, in view of the teaching of Garner, to protect the padlock and its shackle from tampering/cutting tools. It would have been obvious to provide a channel shaped shroud with openings at its ends for the shroud of White as modified by Garner, and to

Art Unit: 3673

substitute a notch for the padlock engaging opening 14 of White, in view of the teaching of Plifka, to provide expected locking results. It would have been obvious to provide anchors and nuts for the weld of White as modified by Garner, in view of the teaching of Garvey, to provide expected attaching results.

Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Hoffman in view of White in view of Garner, Plifka and Garvey et al as applied to claim 2 above, and further in view of Oliver.

Oliver teaches screws 32 welded at 35 to a plate 22. It would have been obvious to weld the screws of White as modified by Garvey to the shroud, in view of the teaching of Oliver, to provide expected results.

Claim 6 is rejected under 35 U.S.C. 103(a) as being unpatentable over White in view of Garner, Plifka and Garvey et al as applied to claim 2 above, and further in view of Oliver and Braxter.

Oliver teaches screws 32 welded at 35 to a plate 22. Braxter teaches that epoxy is a well known substitute for a weld as set forth in column 4, line 49. It would have been obvious to attach the screws of White as modified by Garvey to the shroud with an epoxy, in view of the respective teachings of Oliver and Braxter, to provide expected results.

Applicant's arguments filed August 4, 2008 have been fully considered but they are not persuasive. In response to applicant's remarks on page 3, it is resubmitted that matter which is not supported by the originally filed specification is regarded as new

Art Unit: 3673

matter, and must be removed from the drawings. Whether such matter is regarded by applicant as being supported by the claims is of no significance.

It is also noted that on page 4, the top paragraph of the Remarks filed on August 4, 2008, applicant sets forth that the access door is not being positively claimed in independent claims 1 and 2. Accordingly, the remarks filed on August 14, 2007 on page 7, the bottom two paragraphs are of no patentable significance. It is submitted that patentability cannot be argued based upon an access door, which access door is also argued as not being positively claimed. It is also noted that independent claims 1 and 2 are also rejected in the above prior art rejections, using the White reference as the primary reference.

In response to the argument of August 14, 2007, on page 8, line 25 is of no patentable significance. In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

In response to the arguments of August 14, 2007, on page 9, the first three full paragraphs, it is submitted that the suggestion for the combination of the references to teach a notch to receive a padlock shackle comes from the Plifka reference.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Zahradnik (358) teaches a shroud 45 on an access door 23. Taylor teaches a shroud 61 in fig. 3 screw mounted 67, 68 to an access door 46.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lloyd A. Gall whose telephone number is 571-272-7056. The examiner can normally be reached on Monday-Friday, 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patricia Engle can be reached on 571-272-6660. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Art Unit: 3673

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Lloyd A. Gall/  
Primary Examiner, Art Unit 3673

/L. A. G./  
Primary Examiner, Art Unit 3673  
November 13, 2008